

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DUBIN & DUBIN LLP,

Plaintiff,

v.

ORDER
13-MC-21S

CAROLINE MAYORGA, on behalf of herself and
all others similarly situated,

Defendants.

1. On May 16, 2013, Plaintiff commenced this proceeding seeking to quash a document subpoena served on it by Defendant Mayorga pursuant to Rule 45 of the Federal Rules of Civil Procedure. The subpoena was served in connection with an as-yet uncertified class action initiated by Defendant in the Eastern District of New York, an action to which Plaintiff, a law firm located in this district, is not a party.

2. On May 21, 2013, this Court referred Plaintiff's motion to the Honorable Hugh B. Scott, United States Magistrate Judge, to oversee all pre-trial matters in this case, including discovery, pursuant to 28 U.S.C. § 636(b)(1)(A). As noted by the Magistrate Judge, although “[a] motion to quash a subpoena in an action seeking relief other than production of the subpoenaed information is not normally a dispositive motion.” Arista Records, LLC v. Doe 3, 604 F.3d 110, 116 (2d Cir. 2010). However, because resolution of this motion to quash constitutes the entirety of this miscellaneous civil proceeding, Judge Scott appropriately treated this as a dispositive matter and, on June 25, 2013, issued a Report and Recommendation recommending that: (1) the motion to quash be granted

without prejudice to renewal of the subpoena in the event the class action is certified and (2) the case be closed.

3. Despite being expressly advised that the parties had fourteen (14) days from the date of its service in which to object, in accordance with 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure and the Local Rules of Civil Procedure of this Court, no objections to the Report and Recommendation were filed.

IT HEREBY IS ORDERED, that this Court accepts Judge Scott's Report and Recommendation (Docket No. 12) in its entirety and Plaintiff's motion to quash (Docket No. 2) is GRANTED without prejudice to renewal of the subpoena in the event the class action is certified;

FURTHER, that the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: August 2, 2013
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
Chief Judge
United States District Court